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In re Application of	:	DECISION ON PETITION
GUO, Fangjiang	:	TO REVIEW RESTRICTION
Application No. 10/062,957	:	REQUIREMENT UNDER
Filed: January 31, 2002	:	37 CFR 1.144
For: SYSTEM FOR THE PRESENTATION OF	:	
ANIMALS TO BE MILKED AND METHOD	:	

This is in response to appellant's petition filed under 37 CFR 1.144 received August 2, 2005 requesting a review of the requirement for restriction mailed August 25, 2004 and that the election requirement be withdrawn.

The petition is **DISMISSED** as being untimely.

A review of the record indicates that a first Office action was mailed June 3, 2003. A response was filed December 3, 2003. A second and final Office action was mailed December 24, 2003. A Notice of Appeal was filed on March 22, 2004. Appellant filed an Appeal Brief on May 3, 2004. In response to the Appeal Brief prosecution of the application on the merits was reopened and a requirement for restriction was issued on August 25, 2004. On September 24, 2004, appellant made an election and requested reconsideration of the restriction requirement including reasons as to why the restriction was improper. At the same time, appellant filed a Notice of Appeal with respect to the elected claims and to all other twice rejected claims pending reconsideration of the restriction requirement. On July 15, 2005, the restriction was made Final and the non-elected claims were withdrawn from consideration. Appellant's brief was deemed defective as it included arguments not solely directed to the claims under prosecution. The Appeal Brief was refiled including argument with respect to all twice rejected claims.

37 CFR 1.144 specifies that "after a final requirement for restriction, the applicant...may petition the Director to review the requirement. Petition...must be filed not later than appeal." Since appellant did not file the petition before appeal, the petition is untimely. Accordingly, the petition is dismissed as being untimely.

Any comments or concerns related to this decision should be forwarded to Teri P. Luu at (571) 272-7045.


Donald T. Hajec, Director
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DH/tl: 9/2/05
